

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	
	)	
CITIBANK GLOBAL MARKET HOLDINGS,	)	
INC.	)	
	)	
and	)	
	)	
UNITED STATES STEEL CORPORATION,	)	
	)	
Defendants.	)	

---

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the Environmental Protection Agency, files this Complaint and alleges as follows:

**INTRODUCTION**

1. This is a civil action brought against the United States Steel Corporation and Citibank Global Market Holdings (“Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607. The United States seeks to recover response costs incurred by the United States as a result of releases or threatened releases of hazardous substances at or from the National Zinc Superfund Site, located in Cherryvale, Montgomery County, Kansas. The United States also seeks a declaratory judgment on

liability for response costs that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

### **JURISDICTION AND VENUE**

2. This court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in the District of Kansas because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

4. Plaintiff requests Topeka, Kansas as the location of trial.

### **DEFENDANTS**

5. Defendant United States Steel Corporation (“U.S. Steel”) is a corporation incorporated in the State of Kansas. U.S. Steel is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant Citibank Global Market Holdings (“Citibank”) is a corporation incorporated in the State of New York. Citibank is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### **THE SITE**

7. The National Zinc Superfund Site (“Site”), approximately 360 acres, is located in Cherryvale, Montgomery County, in south-west Kansas.

8. The Site includes a former smelter. Ore roasters, furnaces, and retorts were all part of the smelter. The smelter produced hazardous wastes on the Site including, but not limited to, liquid waste runoff and sludges in lagoons contaminated with heavy metals as well as spillage of hazardous wastes on the ground. A lagoon containing approximately 300 tons of sludge was encapsulated on the Site.

9. As a result of the smelter operations, soil, groundwater, and sediment on the Site, including soil in residential property yards on the Site, showed high levels of metals including, but not limited to, lead, cadmium, and chromium. To address immediate threats to public health, EPA conducted response actions on the Site, including: excavation of the residential yards, removal and consolidation of contaminated soil, and replacement of the contaminated soil in residential yards.

### **LAW GOVERNING CLAIMS FOR RELIEF**

#### **UNDER SECTION 107 OF CERCLA**

10. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous waste is released into the environment, or there is a substantial threat of such release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of such hazardous substance.

11. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42, 237 (August 14, 1981), reprinted in 42 U.S.C.A. § 9615 at 544-48.

12. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defense set forth in subsection (b) of this section –

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance were disposed of,

\* \* \*

shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government or a state . . . not inconsistent with the national contingency plan

13. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides:

In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

### **FACTS RELATING TO LIABILITY OF**

### **THE DEFENDANTS UNDER SECTION 107 OF CERCLA**

14. Edgar Zinc Company built the smelter on or about 1898, and owned and/or operated it until approximately 1932. On or about 1899, the American Steel and Wire Company acquired the Edgar Zinc Company, and the Site was conveyed to the American Steel and Wire Company on or about 1931. The American Steel and Wire Company continued to own and/or operate the Site until on or about 1935.

15. The American Steel and Wire Company became a subsidiary of U.S. Steel Company on or about 1901 and merged on or about 1951 into an entity which became Defendant United States Steel Corporation.

16. On or about 1935, American Steel and Wire sold the smelter to the National Zinc Company, which owned and/or operated the smelter until on or about 1984. The National Zinc Company is a predecessor to Defendant Citigroup Global Markets Holdings, Inc.

### **GENERAL ALLEGATIONS**

17. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

18. There were, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22), releases and threatened releases of hazardous substances into the environment at and from the Site.

19. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been treated, stored, or disposed of at the Site.

20. Pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, EPA began conducting response actions in 2001. EPA has conducted a removal action at the Site, including removing approximately 76,000 cubic acres of contaminated soil and replacing it with clean fill.

21. As a result of the releases or threatened releases at or from the Site, the United States has incurred “response” costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25), § 9607(a), for actions taken in response to the releases or threatened releases at or from the Site. Such costs have not been fully reimbursed by

the Defendants. The United States may incur further response costs or damages in connection with the site.

22. The response costs incurred by the United States in connection with the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

### **CLAIM FOR RELIEF**

23. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

24. Each Defendant is the legal successor in interest to persons who owned and/or operated a facility at the Site during the time of the disposal of hazardous substances at that facility.

25. Each Defendant is therefore jointly and severally liable, under Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), for all costs incurred and to be incurred by the United States in response to releases of hazardous substances at the Site.

26. Defendant Citigroup is the legal successor in interest to persons who owned and operated a facility at the Site during the time of the disposal of hazardous substances at that facility.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Enter judgment against each defendant, jointly and severally, for all costs incurred by the United States in response to releases or threatened releases of hazardous substances at the site;

2. Award the United States prejudgment interest on its response costs;

3. Enter a declaratory judgment against each defendant, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that will be binding in any subsequent action or actions to recover response costs or damages; and
4. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

ELLEN M. MAHAN  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

KATHERINE A. LOYD  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
1961 Stout Street, Room 816  
Denver, CO 80294  
303-844-1365 direct  
303-844-1350 fax